

IN THE UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO

In re
THOMAS JOHN BYRNE

Debtor. No. 13-12164-j7

Frances Montoya and Jose Montoya,
Movants, v. Debtor, Respondent.

AMENDED MOTION OF FRANCES MONTOYA AND JOSE MONTOYA TO MODIFY
AUTOMATIC STAY

Movants, Creditors Frances Montoya and Jose Montoya move the Court for an order modifying the automatic stay entered under §362(a) of the Bankruptcy Code to permit the continued prosecution of their medical malpractice case against the Debtor in Montoya et al versus Thomas J. Byrne et al, Cause No. D-619-CV-2012-00279, Sixth Judicial District Court, County of Luna, State of New Mexico.

As grounds for modifying the stay, Movants state the Debtor had a liability insurance policy in effect at the time of the negligence, with limits of \$300,000 (**Exhibit 1**) to pay the proceeds of any judgment against him in the malpractice action.

WHEREFORE, Movants move to modify the automatic stay to the extent of the insurance policy limits available. Debtor's attorney in the medical malpractice case, Jennifer D. Hall, is not taking a position on this motion. Debtor's attorney in the bankruptcy case, Christopher M. Gatton, opposes this motion. The Trustee does not oppose this motion.

SHAPIRO BETTINGER CHASE LLP

By: Submitted electronically

Dan Shapiro
7411 Jefferson St. NE
Albuquerque, New Mexico 87109
(505) 888-6463
danshap@shapbett.com
Attorneys for Movants

MARTIN E. THREET & ASSOCIATES

By: Ed Threet, Attorney at Law
6605 Uptown Blvd. NE, Suite 280
Albuquerque, NM 87110
(505) 881-5155
Attorneys for Movants

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was served via the CM/ECF system to the following parties listed below entitled to notice this 1st day of August, 2013:

Christopher M. Gatton
chris@giddenslaw.com

Philip J. Montoya
pmontoya@swcp.com

United States Trustee
ustpregion20.aq.ecf.usdoj.gov

SHAPIRO BETTINGER CHASE LLP

By: /s/

Dan Shapiro
7411 Jefferson St. NE
Albuquerque, New Mexico 87109
(505) 888-6463
Attorneys for Movants